

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

)
UNITED STATES OF AMERICA)
)
)
)
v.)
)
JOHN BRUENS, MARY STEWART,)
MELISSA VAUGHN, and)
MARC SIROCKMAN)
)
)
Defendants.)

)

**DEFENDANTS' MOTION IN LIMINE TO EXCLUDE
THE TESTIMONY OF TIMOTHY WEST, M.D.**

According to its witness list and most recent offer of proof, the government has indicated that it intends to call Dr. Timothy West as a witness in this case. On April 23, 2007, the government elicited testimony from William Frye that Mr. Frye invited Dr. West to attend a medical conference in Cannes, France, but that Mr. Frye did not offer the trip contingent on Dr. West increasing his prescribing of the drug Serostim. 04/24/07 Tr. at 28(23) - 29(1). Mr. Frye also testified that Dr. West did not accept the invitation and did not attend the conference. *Id.* at 31(15-16).

Based on Mr. Frye's testimony, Dr. West should not be allowed to testify in this case. The government presumably intends to call Dr. West to corroborate Mr. Frye's testimony that Dr. West was neither offered a *quid pro quo* nor attended the Cannes conference. As such, Dr. West's testimony is not relevant to the questions at issue in this case, namely, whether doctors were, in fact, offered a trip to a medical conference in Cannes, France in return for writing thirty prescriptions of Serostim. Unless it intends to

contradict it's own witness, Mr. Frye, Dr. West's testimony is superfluous and will only waste the time of this Court. As such, that testimony should not be allowed.

Respectfully submitted,

MELISSA P. VAUGHN
By her undersigned attorneys
/s/ Adam S. Hoffinger
Adam S. Hoffinger, Esq.
(admitted *pro hac vice*)
James M. Sullivan, Esq.
(admitted *pro hac vice*)
MORRISON & FOERSTER LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20008-1888
(202) 887-1500

JOHN BRUENS
By his undersigned attorneys
/s/ Thomas McC. Souther
Thomas McC. Souther, Esq.
Roger J. Hawke, Esq.
Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019
(212) 839-5846

MARY STEWART
By her undersigned attorneys
/s/ Mark Berman
Mark A. Berman, Esq.
Hartmann Doherty Rosa & Berman, LLC
126 State Street
Hackensack, NJ 07601
(201) 441-9056

MARC SIROCKMAN,
By his undersigned attorneys,
/s/ Tracy A. Miner
Tracy A. Miner
McKenzie E. Webster
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C.
One Financial Center
Boston, MA 02111

Dated: April 25, 2007

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing motion was filed electronically in compliance with ECF procedures on this 25th day of April 2007.

/s/ James M. Sullivan